

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ERIN McPEAK,

Plaintiff,

v.

COREY BUTCHER, in his individual
capacity,

Defendant.

CASE NO. 3:21-cv-05821-TL

ORDER TO SHOW CAUSE

This matter comes before the Court *sua sponte*. On April 24, 2023, the Parties stipulated to the dismissal of Defendants Centralia Police Department, Chief Stacy Denham, and Corey Butcher in his official capacity. *See* Dkt. No. 58. On July 28, the Parties stipulated to the dismissal of Defendant Lewis County Sheriff's Department, as well as Defendants Kevin Engelbertson and Robert Snaza in both their official and individual capacities. *See* Dkt. No. 77. Therefore, the only Parties remaining in this matter are Plaintiff Erin McPeak and Defendant Corey Butcher in his individual capacity.

1 “Subject matter jurisdiction can never be forfeited or waived, and federal courts have a
2 continuing, independent obligation to determine whether subject matter jurisdiction exists.”
3 *Mashiri v. Dep’t of Educ.*, 724 F.3d 1028, 1031 (9th Cir. 2013); *see also Corral v. Select*
4 *Portfolio Servicing, Inc.*, 878 F.3d 770, 773 (9th Cir. 2017) (examining and finding lack of
5 diversity jurisdiction *sua sponte*). If the Court determines at any time that it lacks subject matter
6 jurisdiction, the Court must dismiss the action. Fed. R. Civ. P. 12(h)(3); *Arbaugh v. Y&H Corp.*,
7 546 U.S. 500, 514 (2006).

8 Defendant does not (and could not) assert diversity jurisdiction, as both Plaintiff and
9 Defendant were residents of Washington State when this matter was commenced. *See* Dkt.
10 No. 1-1 at 2; 28 U.S.C. § 1332. Instead, Defendant asserts federal question jurisdiction for
11 alleged violation of Plaintiff’s constitutional rights under the First, Fourth, Eighth, and
12 Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983. *See* Dkt. No. 1
13 at 1–2; 28 U.S.C. § 1331. However, all state actors in this matter have been dismissed, leaving
14 only Defendant in his individual capacity.

15 Accordingly, the Court ORDERS:

16 (1) Defendant is ORDERED TO SHOW CAUSE by **August 14, 2023**, why this matter
17 should not be remanded to the Lewis County Superior Court for lack of subject
18 matter jurisdiction. Plaintiff may respond by **August 28, 2023**. No reply brief is
19 permitted. No brief shall exceed **ten (10) pages**.

20 (2) Given the dismissal of Defendants Lewis County Sheriff’s Department, Kevin
21 Engelbertson, and Robert Snaza, their Motion for Summary Judgment (Dkt.
22 No. 50) is STRICKEN as moot.
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1 (3) The matter is STAYED pending resolution of this Order.

2 Dated this 31st day of July 2023.

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5 Tana Lin
6 United States District Judge
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